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## BEFORE THE ARIZONA CORPORATION COMMISSION

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Arizona Corporation Commission

**DOCKETED**

FEB 18 2014

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**ORIGINAL**IN THE MATTER OF THE REORGANIZATION ) DOCKET NO. E-04230A-14-0011  
OF UNS ENERGY CORPORATION ) DOCKET NO. E-01933A-14-0011  
)  
)  
)**RESPONSE TO NOBLE AMERICAS ENERGY SOLUTIONS'  
APPLICATION FOR LEAVE TO INTERVENE**

UNS Energy Corporation<sup>1</sup> and Fortis Inc.<sup>2</sup> (together, "Joint Applicants") respond to Noble Americas Energy Solutions LLC's ("Noble") Application for Leave to Intervene ("Application"). Noble does not have standing to intervene under A.A.C. R14-3-105, particularly given the limited nature of the merger proceeding. Moreover, on its face, Noble's application clearly demonstrates that its participation will expand the scope of this proceeding beyond that contemplated by A.A.C. R-14-803 concerning reorganizations and the related public interest considerations.

**A. Noble Lacks Standing to Intervene.**

A.A.C. R14-3-105 provides that intervention is limited to parties "*who are directly and substantially affected by the proceedings.*" Noble: 1) is not a customer of TEP, UNSE or UNSG (collectively "Arizona Utilities"), 2) is not an organization that represents interests of customers residing within the Arizona Utilities service territories; and 3) does not have a business relationship with the UNS Energy Corporation or the Arizona Utilities. These are the considerations the

<sup>1</sup> On behalf of itself and its affiliates UniSource Energy Services, Inc., Tucson Electric Power Company ("TEP"), UNS Electric, Inc. ("UNSE") and UNS Gas, Inc. ("UNSG").

<sup>2</sup> On behalf of itself and its affiliates FortisUS Holdings Nova Scotia Limited, FortisUS Inc. and Color Acquisition Sub Inc.

1 Commission typically weighs in determining whether intervention should be granted. Moreover,  
2 Noble does not identify any direct relationship with UNS Energy Corporation or the Arizona  
3 Utilities in its Application. Noble's sole basis for intervention is that both Noble and two of the  
4 Arizona Utilities have intervened in the same generic docket (Docket No. E-00000J-13-0375  
5 ("Innovation Docket")) and Noble is curious as to what positions the Joint Applicants might take in  
6 the Innovation Docket and how the merger might relate to potential issues that might stem from the  
7 Innovation Docket.<sup>3</sup> This is not a demonstration of "*substantially affected*" as required by the Rule.  
8 Given Noble's lack of relationship to the Joint Applicants or the service territories of the Arizona  
9 Utilities, Noble will not be directly and substantially affected by this proceeding as required by  
10 A.A.C R14-3-105.A.

11 Additionally, Noble's application, on its face, demonstrates that Noble's participation in this  
12 docket would in fact unduly broaden the scope of this proceeding. This proceeding is a financial  
13 transaction - a reorganization under the Commission's Public Utility Holding Companies and  
14 Affiliated Interests Rules (A.A.C. R14-2-801 *et seq.*). Under Rule 803.C, the Commission must  
15 consider whether the reorganization would impair the financial status of the public utilities,  
16 otherwise prevent them from attracting capital at fair and reasonable terms or impair their ability to  
17 provide safe and reliable service. The Commission also considers whether the financial transaction  
18 is in the public interest.

19 Rather than focusing on the financial impairment standard, Noble appears to be concerned  
20 about what information Fortis *might* have the Arizona Utilities provide to the Commission in the  
21 Innovation Docket and what policy decisions Fortis management *might* recommend in the future.  
22 Noble indicates that it wants to "ascertain[] Fortis' views and policy(ies) position on how to address  
23 the potential impact on the Commission's current energy utility regulatory model of innovation and  
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25 <sup>3</sup> It should be noted that the Commission has at any given time several generic dockets pending that impact  
26 the Arizona Utilities. The fact that an entity participates in those dockets does not automatically afford  
27 standing to intervene in an unrelated docket. To permit intervention under such circumstances would violate  
the express requirements of A.A.C. R14-3-105 regarding standing and scope and set a bad precedent for the  
Commission for future proceedings.

1 technological developments in the generation and delivery of energy.” Noble Application at 6.  
2 However, the potential positions that management might take in a generic policy docket and in the  
3 future is irrelevant to the consideration of any financial impairment in a Rule 803 reorganization  
4 proceeding. Surely, Noble is not suggesting that an entity’s potential comments in a generic policy  
5 docket can and should impact the financial impairment analysis or whether a financial merger is in  
6 the public interest.

7 Moreover, the Joint Notice of Intent to Reorganize and the related supporting testimony do  
8 not suggest any particular position on future innovation or technology. Rather, they simply note that  
9 there may be changes coming in the future (as evidenced, in part, by the initiation of the Innovation  
10 Docket) and that the proposed merger places the Arizona Utilities in a better financial position to  
11 respond to any innovations that may be mandated or prudently implemented in the future. Delving  
12 into what information the Arizona Utilities might submit in the Innovation Docket will unduly  
13 broaden the scope of this proceeding. Moreover, as TEP and UNSE are participants in the  
14 Innovation Docket, Noble has the ability to pursue answers to appropriate questions through that  
15 docket.

16 Finally, intervention in Commission proceedings is not a matter of right. As discussed  
17 above, the Commission’s rules set forth specific parameters to ensure that proceedings do not  
18 become unwieldy or platforms for irrelevant issues. Indeed, the Commission has rejected  
19 intervention requests where the applicant does not have a direct relationship with a utility – such as  
20 being a customer – or the applicant’s participation would unduly broaden the scope of the docket,  
21 even in dockets of a broader scope than a Rule 803 reorganization (such as a general rate case). See,  
22 e.g., August 27, 2012 Procedural Order, Docket No. WS-03478A-12-03007.<sup>4</sup>

23 **B. Any Participation by Noble Should be Limited to Merger Issues.**

24 Should the Commission grant Noble’s intervention, Noble’s participation must be limited to  
25 the relevant issues under Rule 803. Inquiry into potential positions in generic dockets not related to

26 <sup>4</sup> This ruling was reversed when the developer that had been denied intervention submitted proof that it also  
27 was a customer of the utility.


1 the standards expressly set forth in Rule 803, is not relevant and will most certainly broaden the  
2 scope of this proceeding.

3 **C. Conclusion.**

4 Joint Applicants believe that Noble does not have standing to intervene and should not be  
5 allowed to unduly broaden the scope of the issues presented in this docket.

6 RESPECTFULLY SUBMITTED this 18<sup>th</sup> day of February, 2014

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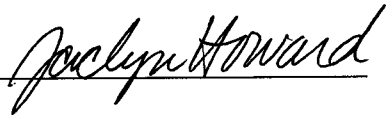
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A handwritten signature in cursive script, appearing to read "Jocelyn Howard", is written over a horizontal line.